HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.17466 OF 2006

Between:

G.Maheswarappa
. . .Petitioner

AND

The District Collector,
Kurnool and others
. . .Respondents

Counsel for the Appellant :Smt. Deepthi
for Shri J.R.ManoharRao

Counsel for the Respondent Nos.1to5&15: Government Pleader for
Services-II

Counsel for the Respondent Nos.6 to 14 : None

Dated: 1st September, 2006

: ORDER :

PER G.S.SINGHVI, CJ

In this petition, the petitioner has prayed for quashing order dated 07.11.2005 passed by the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') in O.A.No.366 of 2003 and letter dated 06.11.2002 vide which Consultant-AP-III, Project Administrator and Superintending Engineer, Circle No.2, Nandyal, Kurnool District (respondent No.4 herein) rejected his claim for fixation of seniority with retrospective effect. He has further prayed for issue of a direction to the official respondents to fix his seniority on the basis of deemed date of appointment i.e.
25-11-1988.

The Facts:

In furtherance of policy framed by the government, which was circulated vide G.O.Ms.No.98, Irrigation (Projects Wing) Department, dated 15-4-1986 to provide employment to the persons whose land had been acquired for major and medium irrigation and power projects, the petitioner applied for appointment by claiming that his land has been acquired for construction of Srisailam Project. After sometime, he along with others filed Representation Petition No.6081 of 1987 before the Tribunal with the prayer that the respondents be directed to appoint him in accordance with the policy framed by the government. The same was disposed of by the Tribunal vide its order dated 27-7-1989. The Tribunal referred to the relevant portions of G.O.Ms.No.98 dated 15-4-1986 and observed that even though the

G.O. does not provide for automatic appointment, the cases of the applicants deserve to be considered on priority basis. The relevant portions of that order are reproduced below:

> "4. The relevant G.O.98, dated 15-4-1986 on which the petitioners bank deals with the giving of employment to the persons from the displaced families or their dependents as a result of the implementation of the Project. This G.O. is of general nature, not related to only one specific project. The relevant portion of the said GO reads as follows:
>
> GOVERNMENT OF ANDHRA PRADESH
>
> ABSTRACT
>
> Major&Medium Irrigation and Power Projects-Rehabilitation provision of employment to the displaced persons or their dependents – Orders – Issued.
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> IRRIGATION (PROJECTS WING) DEPARTMENT
>
> G.O.Ms.No.98 Dated: 15-4-1986
>
> Read the following:-
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> 1.G.O.Ms.No.676, Irrigation & Power Dept., dt. 17-11-78.
> 2.From the Chief Engineer General Lr.No.Gel.S1/1162/88-2, dated 1-8-1980.
> 3.From the Chief Engineer, SRSP, Lr.No.K3/4261/81, dt.5-8-83.
> 4.From the Secretary, APPEC Lr.No.2718/H4/2/84, dt.20-8-84.
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>
> O R D E R:
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> 4.After careful examination and consideration, the following orders are issued in Supersession of orders in G.O.Ms.No.676,Irrigation and Power Department, dated 17-11-1978.
>
> i)Categories equivalent to Junior Assistant/Typist and the cadres below arising in Major and Medium Irrigation and Power Projects shall be filled up by the displaced families/or other dependents of a respective project duly following the reservation for various categories viz. SC, ST, BC, Ex-Servicemen etc.
>
> ii)The candidates eligible for appointment under this scheme

shall be displaced persons or his/her son, daughter or spouse, there being so other earning member in the family.

ii)Applications for appointment from the eligible candidates shall be made to the District Collector concerned within a period of one year from the date of actual displacement of the family. Preference shall be given with reference to the date of displacement and to those applicants whose houses and lands are acquired against those whose land or house acquired against those whose land or house only is acquired. The District Collectors shall draw up a list of such applications and forward the same to the Project authorities for appointment.

iv)All appointments made in this scheme shall be temporary to start with. However, the services of these employees will be regularized in the categories of posts whose pay is equal or less than that of JA.

xxx xxx xxx

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

T.R.PRASAD
SECRETARY TO GOVERNMENT"

Nowhere it is stated in the G.O. that the job should be given to the persons automatically. Unless the vacancies are available or made available, it is not possible for any authority to provide employment to the petitioners. Thus, seeking their willingness and even putting their names on list would not entitle them to the jobs as a matter of right.

5. The fact, however, is that they come from the displaced familities. Their willingness has been sought, their qualifications are considered and they have been put on the panel for consideration for appointment. So, they deserve to be considered in preference to others, in respect of 50% of the vacancies reserved as and when arise. It is not possible for the Tribunal, as of now, to give any direction compelling the respondents to consider appointing them, just because they have been on the list after obtaining their willingness, especially when there are no vacancies. Nevertheless, direction is in order to appoint them as and when vacancies arise in future in respect of 50% of the posts, in preference to

other persons, however, they are proposed to be recruited/drafted. Unless the present petitioners are accommodated first, no further appointment shall be made in regard to 50% of the vacancies which might arise in future. The direction is given accordingly. Earlier, interim order to keep one post for each petitioner reserved was given and it is continuing. The object of the interim order is the direction given now. So the earlier interim order stands now extinguished as infructuous with the issuance of this direction. All the above RPs. Are disposed of accordingly. No costs."

After four years, the petitioner filed Writ Petition No.989 of 1993 for issue of a direction to the respondents to implement the order of the Tribunal. The same was disposed of by the High Court on 22-3-1994 with the direction that the writ petitioner be absorbed against the vacancies available either in Srisailam Project or Srisailam Right Bank Canal or Srisailam Left Bank Canal Project.

In compliance of the direction given by the High Court, the competent authority passed order dated 20-7-1995 appointing the petitioner as Junior Assistant. Immediately thereafter, the petitioner started representing for fixation of seniority with retrospective effect by claiming that persons who applied with him had been appointed in 1988 and he had been discriminated without any rhyme or reason. He then filed O.A.No.8164 of 1998 for fixation of seniority with retrospective effect. The same was disposed of by the Tribunal by giving liberty to the petitioner to make a detailed representation to the concerned authority with a direction that such representation be disposed of within three months.

In furtherance of the liberty given by the Tribunal, the petitioner made representation reiterating his claim for seniority. The same was rejected by the competent authority on the premise that he cannot be assigned seniority from a date earlier than his appointment.

The petitioner challenged the rejection of his representation by filing O.A.No.3204 of 2002, which was disposed of by the Tribunal by directing respondent No.4 to decide the petitioner's representation afresh. Thereafter, respondent No.4 passed order dated 12-9-2002 whereby he rejected the petitioner's claim for antedating his seniority. Legal notice dated 6-10-2002 sent by the petitioner through his advocate was rejected by respondent No.4 vide letter dated 6-11-2002.

Undeterred by repeated reversals in the matter of fixation of seniority, the petitioner filed O.A.No.366 of 2003 claiming seniority over non-applicant Nos.6 to 14. The Tribunal dismissed the application by observing that mere forwarding of application made by the petitioner and calling him for interview does not entitle the petitioner to be appointed. The Tribunal also observed that the petitioner cannot be assigned seniority from a date earlier than his actual appointment as Junior Assistant.

Learned counsel for the petitioner argued that failure of the official respondents to consider the petitioner's case for appointment with effect from 1988 should have been treated by the Tribunal as sufficient for issue of a mandamus to antedate his appointment and fix his seniority from the date of persons junior to him were appointed in accordance with the policy framed by the government. She submitted that the petitioner cannot be made to suffer merely because the concerned authorities did not act in accordance with the policy framed by the government for providing employment to the persons displaced in furtherance of its policy of execution of irrigation/power projects.

We have thoughtfully considered the arguments of the learned counsel, but have not felt impressed. The petitioner has not placed on record copy of order dated 20-7-1995 vide which he was, for the first

time, appointed as Junior Assistant in accordance with the policy contained in G.O.Ms.No.98, dated 15-4-1986. If that order had been placed on record, we could have apprised ourselves with the terms and conditions of appointment and then asked the learned counsel as to why her client did not challenge that order before the Tribunal within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 and made a prayer for directing the respondents to antedate his appointment. It appears to us that, with a view to keep the Court in dark about the terms and conditions of his appointment and avoid scrutiny of his claim in a correct perspective, the petitioner has deliberately omitted to place on record copy of the order of appointment. Therefore, he is not entitled to any relief under Article 226 of the Constitution.

De hors the above conclusion, we are convinced that the petitioner's claim for antedating his seniority is wholly misconceived and the Tribunal did not commit any error by declining to entertain his prayer. An appointment to the service becomes effective from the date the appointee reports for duty and his report is accepted by the competent authority. The moment this happens, relationship of master and servant comes into existence and the appointee acquires right to receive salary and other allowances, if any, attached to the post. If the appointment is preceded by regular selection, the appointee acquires the status of substantive employee from the date of joining the service. Only in exceptional cases, an appointment by direct recruitment can be notionally antedated if there exists a provision in the rules regulating recruitment. In the cases of promotion, antedating can be done if the recruitment rules provide for quota system.

In the case before us, the recruitment is regulated by an administrative policy framed by the Government, which was circulated

vide G.O.Ms.No.98 dated 15.04.1986. Though the petitioner is said to be applied in the year 1986 for appointment by claiming that he was a displaced person, he could get appointment only in July 1995. He neither challenged the order of appointment dated 20-7-1995 nor made a prayer for antedating the same. It is not even the pleaded case of the petitioner that the policy contained in G.O.Ms.No.98, dated 15-4-1986 contemplates retrospective appointment of the eligible persons. Therefore, his claim for fixation of seniority on notional basis with effect from the date of appointment of the unofficial respondents i.e. 25.10.1988 cannot but be treated as thoroughly misconceived and ill-founded.

For the reasons stated above, we hold that the Tribunal did not commit any illegality by refusing to entertain the petitioner's prayer for fixation of his seniority with retrospective effect.

In the result, the writ petition is dismissed.

As a sequel to disposal of the main petition, WPMP No.21894 of 2006 filed by the petitioner for expediting the hearing of the writ petition is disposed of as infructuous.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 01.09.2006

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